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BEFORE THE

Federal Communications Commission

WASHINGTON, DC 20026

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DEC 19 1994

In the Matter of	)	
	)	
Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services	)	CC Docket No. 92-115
	)	
Amendment of Part 22 of the Commission's Rules to Delete Section 22.119 and Permit the Concurrent Use of Transmitters in Common Carrier and Non-Common Carrier Service	)	CC Docket No. 94-46 RM 8367
	)	
Amendment of Part 22 of the Commission's Rules Pertaining to Power Limits for Paging Stations Operating in the 931 MHz Band in the Public Land Mobile Service	)	CC Docket No. 93-116
	)	

JOINT PETITION FOR RECONSIDERATION AND CLARIFICATION

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December 19, 1994

Table of Contents

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AirTouch Communications, Inc. and U S WEST NewVector Group, Inc.[1] ("Petitioners"), by their attorneys, jointly file this Joint Petition for Reconsideration and

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[1] AirTouch is a major international provider of cellular, paging, and other wireless services in numerous markets. NewVector, the cellular subsidiary of U S WEST, Inc., provides cellular service in 13 western, southwestern and midwestern states.

Clarification in response to the Report and Order issued by the Commission on September 9, 1994.[2]

1. Introduction and Summary

With the initiation of this proceeding in 1992, the Commission undertook the task of simplifying, and eliminating where possible, the regulatory requirements applicable to services governed by Part 22 of the rules. Petitioners submit that, with the release of the Report and Order, the Commission has largely achieved these goals, and it is to be commended for its efforts.

The process applicable to filings made under Part 22 has been substantially streamlined, and many unnecessary operational requirements have been removed or relaxed. The new regulatory framework will benefit industry participants in their efforts to introduce new services or expand upon existing services, a result which will directly benefit consumers. The new rules will also substantially reduce the burden on Commission resources.

Petitioners provide below a few additional suggestions which, they believe, will further the Commission's deregulatory goals. Specifically, Petitioners request clarification regarding the regulatory status of transfer of control applications formerly governed by old rule Section 22.39(c)(1), and suggest an additional revision to current Commission policies applicable to pro forma transfers of control that will further streamline the process and eliminate unnecessary delays. Petitioners also request elimination of certain information disclosure requirements mandated by new rule Sections 22.929(a)(2), 22.929(b)(1) and (b)(2). Petitioners submit that the provision of this information will not serve any discernable regulatory interest

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[2] Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, Report and Order, CC Docket No. 92-115, released September 9, 1994 ("Report and Order").

and will be unduly burdensome to compile. Petitioners request further that old rule Section 22.903(e) be reinstated in order to eliminate confusion over a licensee's dual licensing capabilities. Petitioners also seek clarification that certain types of requests for developmental authorization will be treated as "minor" applications.

Finally, Petitioners request that the Commission expedite its review of the issues raised on reconsideration in this proceeding. With the new rules set to go into effect on January 1, 1995, expedited review will minimize disruption to the industry.

2. Transfer Application Requirements

Petitioners request clarification regarding the regulatory status of transfer of control applications formerly governed by old rule Section 22.39(c)(1), and suggest additional revisions to current Commission policies applicable to pro forma transfers of control that will further streamline the process and eliminate unnecessary delays.

a. Old Rule Section 22.39(c)(1)

Old rule Section 22.39(c)(1) provides that "a change from less than 50% ownership to 50% or more ownership shall always be considered a transfer of control," requiring prior FCC approval. Section 22.137, the rule that will supersede Section 22.39(c)(1), contains no comparable language. Petitioners support the elimination of the policy embodied in Section 22.39(c)(1), but request confirmation that the omission was intended.

Section 22.39(c)(1) creates filing obligations for all transactions proposing a change in ownership from less than 50% to more than 50%. This blanket filing requirement serves no apparent regulatory purpose in situations where the entity acquiring the majority interest is the same entity that controlled the licensee prior to the transfer -- for example, in limited partnerships where the sole general partner/manager holds less than a 50% interest but

later acquires a majority interest. Although control of the licensee did not change hands, the filing of a seemingly redundant transfer of control application was nonetheless mandated by Section 22.39(c)(1). Another common scenario was where a limited partner holding a minority interest increased its stake in the licensee to more than 50%. Here, too, a transfer application was required even though control of the system (both de jure and de facto) continued to reside with the general partner(s) both before and after the transaction.

The absence of a provision comparable to Section 22.39(c)(1) in the new Part 22 rules suggests an affirmative decision by the Commission to eliminate the need to file transfer applications in these types of circumstances.[3] A potential for confusion arises, however, from language in new rule Section 22.123 (essentially a restatement of old rule Section 22.23(c)(1)), which classifies filings as major or minor. In particular, Section 22.123(a) provides that "[f]ilings are major if they specify a substantial change in beneficial ownership or control (de jure or de facto) . . . ." The undefined reference to transactions involving "a substantial change in beneficial ownership" might be construed as creating a broad filing requirement similar or identical to that formerly imposed by Section 22.39(c)(1). Given the importance of this question, Petitioners seek clarification that applications need only be filed for transactions where control (either de jure or de facto) is transferred to a new entity, and that the 50% threshold is not automatically determinative of a transfer of control.

b. Pro Forma Applications

Petitioners urge the Commission to adopt two proposals suggested in comments filed in this proceeding: (1) the elimination of prior Commission approval for purely internal

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[3] Transfer applications would obviously be required where control of a licensee actually changes hands.

changes in corporate ownership organizational structures,[4] and (2) a request that the Commission deem pro forma assignment and transfer applications granted effective upon filing with the Commission, or alternatively, within 15 days after filing unless the Commission interposes an objection in the interim.

First, Petitioners agree that it would be reasonable for the Commission to find that no transfer or assignment has occurred within the meaning of Section 319(d) of the Communications Act, and therefore no prior consent should be required when a purely intracorporate reorganization occurs.[5] In the absence of a change in ultimate ownership or control, there is no need for the Commission to undertake another review of the ultimate owner's or controlling entity's qualifications. Accordingly, the Commission should "adopt rules providing that internal reorganizations and similar organizational changes not involving any changes in ultimate ownership or control do not constitute transfers of control or assignments of authorizations."[6] Adoption of this proposal will substantially reduce the Commission' processing burden.[7]

Another proposal raised in the comments requested that the Commission eliminate the waiting period for grant of applications for pro forma assignments and transfers.[8] Under current procedures, applicants must wait to implement pro forma changes until the Commission formally grants the applications pursuant to public notice. This process currently

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4 See BellSouth Comments at 12-14.

5 Id. at 12-13.

6 Id. at 14.

7 For example, it was recently necessary for the Commission to process 53 transfer applications which were filed by AirTouch in order to change the company's state of incorporation.

8 BellSouth Comments at 14-15.

takes approximately 1 to 2 months from the filing date. Under the proposal discussed in the comments, such applications would be deemed granted upon filing with the Commission, subject to reconsideration by the Commission within thirty days from the filing date. This approach would "permit licensees to engage in relatively insubstantial reorganizations, partnership changes, and similar activities without waiting for the staff to reach their applications for routine processing."[9]

If the Commission is hesitant to adopt this approach, it might consider a slightly different option pursuant to which pro forma applicants would be able to effectuate the proposed transaction 15 days after filing unless the Commission interposes an objection in the interim.[10] The Commission would be in a position to delay transactions it considers controversial for whatever reason, but non-controversial proposals which would apply to almost all pro forma transactions, could be closed on a more expedited basis without the need for further Commission action.

3. Information Requirements

One of the Commission's primary goals in this proceeding was the elimination of "outdated and unnecessary information collection requirements."[11] While the Commission has made major strides toward achieving this goal, a few information collection requirements remain which serve no perceived regulatory purposes. Petitioners submit that elimination of the

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9 Id. at 15.

10 This is consistent with procedures used in other services . See, e.g., Regulation of International Common Carrier Services, 7 FCC Rcd. 7331 (1992), codified at 47 C.F.R. § 63.12.

11 Report and Order at 3.

reporting requirements discussed below will conserve Commission and licensee resources and further the Commission's deregulatory policy objectives.

a. Section 22.929(a)(2)

Section 22.929(a)(2) requires cellular licensees to submit the "call sign(s) of other facilities in the same area that are ultimately controlled by the real party in interest to the application." While the provision of this information may be useful to the Commission in connection with certain types of mobile services, it seems entirely unnecessary in the cellular context, where licensees are given the exclusive right to operate on a given frequency block within a specified geographic area. In this regard, the Commission has previously stated that a very similar information requirement -- Item 18 of the FCC Form 401, which requests information about ownership and control of other Part 22 radio stations within 40 miles of the proposed site -- is not applicable to cellular carriers.[12] Conversely, the compilation of this information will often be extremely burdensome, particularly with respect to cellular systems that use a large number of microwave facilities. Given the absence of a discernable need for this information, Petitioners request that the information disclosure requirement imposed by Section 22.929(a)(2) be eliminated.

b. Section 22.929(b)(1)

Section 22.929(b)(1) requires the submission of the following information in the Form 401, Schedule C, or as an exhibit: (1) the site elevation above mean sea level (AMSL); (2)

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12 In the Matter of Amendment of the Commission's's Rules for Rural Cellular Service, Third Report and Order, 4 FCC Rcd 2440, 2444 (1988) ("A reply to Item 18 has been required for all non-cellular applicants to determine if the applying entity was requesting additional frequencies through other business affiliations without adequate justification. Since this consideration is not applicable to cellular applicants, we no longer require cellular applicants to complete this item.").

the proximity of the site to adjacent market boundaries; and (3) the proximity of the site to international borders. Petitioners believe that the information is unnecessary and should not be required.

The site elevation alone does not directly affect the service area boundary or CGSA calculation required by the Schedule C, nor does it affect the antenna structure data required in the Schedule F. Since the site elevation is part of the height above average terrain (HAAT) calculation already required by the Schedule C, provision of the site elevation data, by itself, does not appear to be relevant to the processing of applications.

Similarly, the proximity of a cell site to adjacent market boundaries is not important to the licensing or operation of a cellular system. Other factors are important, however. In situations where a licensee has a cell whose 32 dBu contour extends into the adjacent market, the applicant must certify that it has a contract from the adjacent market carrier. Moreover, in accordance with Section 22.907, all licensees are required to perform frequency coordination with systems that have transmitters located within 75 miles of a cell site. However, a cell site's proximity to an adjacent market border does not affect these requirements, nor does the information assist the Commission in determining whether the licensee is in compliance with the rules. Information concerning a cell site's distance to the border is therefore superfluous. The compilation of this information will be burdensome for applicants, with no countervailing benefit to the Commission, other licensees, or the public. Accordingly, Petitioners request that the requirement be deleted.

Finally, the requirement that licensees specify the proximity to international borders is also unduly burdensome, particularly if a system is clearly beyond the 45 mile limit

required for international coordination.[13] Petitioners suggest an alternative approach. Licensees can provide a statement that the subject cell site is or is not within the 45 mile limit required for international coordination. Under a second alternative, the Commission can provide a place on the Schedule C comparable to the Schedule B on the Form 600 which asks whether the site is or is not within 72.42 km (45 miles) of an international border.[14]

c. Section 22.929(b)(2)

Section 22.929(b)(2) requires licensees to provide, among other items, the antenna gain in the maximum lobe; the beamwidth of the maximum lobe of the antenna; a polar plot of the horizontal gain pattern of the antenna; and the electric field polarization. Petitioners submit that this information will serve no useful purpose.

Under the cellular rules, a licensee's CGSA is calculated using a formula (currently codified in 22.903(a), new Section 22.911(a)). The formula only requires the effective radiated power, and antenna center or radiation height above average terrain (HAAT), height

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13 Approximately 30 states do not border on any international territory. Moreover, only a fraction of the cellular systems within the remaining states actually border on international territory.

14 Although not required by rule 22.929, the FCC Form 600 (Item C21) Schedule C requires licensees to provide the distance from the cell site to the CGSA border in addition to the service area boundary ("SAB") calculation. While the distance to the SAB is calculated through the use of a formula, the distance to the CGSA must be manually reviewed and calculated for each radial. The information is largely immaterial, since, other than one cell stand-alone systems, the eight cardinal radials will not actually comprise the CGSA boundary. Elimination of the requirement would greatly assist licensees in streamlining the licensing process, and would further the Commission's regulatory parity goals insofar as the requirement only applies to cellular services, not PCS or ESMR. In the alternative, Petitioners request that the Commission clarify in the Form 600 instructions that this information is only required for those radials that comprise the CGSA of the applicant's cellular system.

above sea level (HASL) or height above mean sea level (HAMSL). Thus, it appears that the information requested in Section 22.929(b)(2) is not used for determining the service area boundaries and CGSA. With respect to the provision of polarization information, the Commission has previously stated that such information was unnecessary. [15] The polarization information is also unnecessary in light of the fact that cellular is only authorized to operate using vertical polarization unless a rule waiver or other separate authorization is required.[16] Accordingly, Petitioners request that Section 22.929(b)(2) be modified to delete these requirements.[17]

d. Old Rule Section 22.903(e)

The Commission has deleted existing Section 22.903(e), the dual licensing rule. Petitioners request that the rule section be reinstated. In initially adopting the rule in the unserved area proceeding,[18] the Commission noted that dual licensing was not prohibited under the rules in existence at the time, but "confusion has been created because the rule is not explicitly codified."[19] Having observed that dual licensing would create economies of scale and service efficiency in cellular markets, the Commission subsequently clarified that licensees in more than one market could use coverage from a single cell as part of their CGSA so long as the

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15 Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, Notice of Proposed Rule Making, 7 FCC Rcd 3658, 3675 (1992). ("We propose to remove 33i, Polarization, because this information is unnecessary....").

16 See new rule Section 22.367(a)(4).

17 Section 22.929(b)(2) also directs licensees to provide the antenna manufacturer, model and type. Petitioners believe this information is important, but there is no place on the Form 600, Schedule C, for the data. This issue is addressed in Section 5 below.

18 First Report and Order and Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd 6185, 6230 (1991).

19 Id.

cell is licensed to each licensee. The Commission stated that "this dual licensing was always our intent . . . ."[20]

Petitioners agree that economies of scale and service efficiency are achieved through dual licensing, particularly in cases where two different licensees are controlled by the same entity. Recodifying the dual licensing rule would eliminate confusion over whether such licensing is allowed, and also clarify the status of existing dual-licensed cell sites.[21]

e. Section 22.947(c)

New rule Section 22.947(c), relating to system information update ("SIU") filings, omits the language contained in the existing rule (Section 22.925) that licensees may show pending applications in their SIU filings. Petitioners request that language be added to new Section 22.947(c) to confirm that licensees are permitted to include pending applications in their SIU coverage filings. In addition, Section 22.947(c) states that licensees must file "an exhibit showing technical data relevant to determination of the system's CGSA." The Commission should codify the specific information required in SIU filings.[22] In addition, Petitioners

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20 Third Report and Order and Memorandum Opinion and Order on Reconsideration, 7 FCC Rcd 7183, 7190 (1992).

21 Clarification on this point is further necessitated by the Commission's seemingly inconsistent statement in the Report and Order that "[w]e do not believe that it is in the public interest to allow two different licensees to share the same transmitter. We are concerned that the shared use of the same transmitter by two different licensees may raise questions regarding the control and responsibility for the transmitter." Report and Order at 31. This statement was made in the context of a discussion regarding shared transmitters for private and common carrier services, and is flatly inconsistent with the sentiments expressed by the Commission in the unserved area proceeding noted above.

22 The text of the Report and Order requires licensees to submit Form 401, Schedule B, Table MOB-3 information for all external cell sites. We assume -- and the Commission should clarify -- that the Commission expects licensees to submit the new Form 600, Schedule C (rather than Table MOB-3) for all external cell sites.

seek clarification that such information can be provided to the Commission in a format other than the Table MOB-3, such as a spreadsheet.

f. Sections 22.163(e) and 22.165(e)

Petitioners request clarification of Sections 22.163(e) and 22.165(e), which require licensees to notify the Commission of modifications and additional transmitters that change their CGSA. These rules do not appear to require notifications for cell sites that are internal to a consolidated CGSA. The Commission should affirm this view as the submission of information applicable to internal cell sites in a consolidated CGSA is not necessary to satisfy the underlying purpose of the rules. That purpose is "that licensees of adjacent cellular systems will be able to assess interference potential correctly when designing or modifying their systems."[23] Where CGSAs are consolidated, the adjacent licensees are owned or controlled by the same entity and there are no such interference problems.

4. Clarification of Sections 22.905(a) and 22.927

A number of equipment vendors are now marketing "wireless PBX" equipment. Wireless PBX equipment operates like a cellular base station in that mobile cellular users communicate through the wireless PBX, and the wireless PBX controls the mobiles that communicate with it. These wireless PBX systems operate on cellular base station frequencies. Petitioners request that the Commission make clear that its rules now require wireless PBX operators to obtain permission to operate from one of the authorized cellular carriers within the cellular market where the wireless PBX base station is located. Absent such permission, the wireless PBX and mobiles that communicate with it are unauthorized, since Section 22.905(a) assigns a cellular channel block exclusively to one licensee for use within the licensee's CGSA.

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[23] Report and Order at 13.

In addition, Section 22.927 requires cellular licensees to exercise "effective operational control" over mobile stations in their market. In order to obtain such control, cellular licensees must be aware of the wireless PBX stations that are operating within their CGSA, and take the necessary steps to assure that the wireless PBX is properly authorized.

5. FCC Form 600 Issues

In GN Docket No. 93-252,[24] the proceeding in which rules are being developed to govern the provision of commercial mobile radio services, the Commission adopted a new form -- FCC Form 600 -- to replace Form 401, which is now used for Part 22 services. Insofar as the information to be included in the new form will be based on rules adopted in this proceeding, it is appropriate to address issues relevant to the Form 600 in this petition.[25]

a. Schedule C

Petitioners request guidance regarding the number of Schedule Cs required when using the Form 600. Specifically, the instructions to the form seem to indicate that only one Schedule C is required for a geographic location, regardless of the number of transmitters at the location.[26] However, this approach is inconsistent with the requirements associated with existing Form 401 Schedule B, where technical information is required for each transmitter at a geographical location. Petitioners seek confirmation that only one Schedule C per location is

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[24] In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, Third Report and Order, GN Docket No. 93-252, FCC 94-212 (released September 23, 1994).

[25] Petitioners plan to incorporate this petition by reference in a separate petition for reconsideration to be filed in GN Docket No. 93-252.

[26] For example, the Commissioner's FCC Form 600 instructions, Item C1, states that "This item indicates what action the filer wants the FCC to take in the database with regard to this location." (Emphasis added).

required, and that licensees should report combined technical data for all transmitters at the same location in Items C 18-21.

As noted above, Section 22.929(b)(2) requires applicants to provide the antenna manufacturer, model number, and type. Although licensees would find this information useful, there is no place on the Schedule C to provide it. Petitioners acknowledge that the information could be submitted as part of an exhibit, but for administrative ease in processing and reviewing applications, it would be more efficient to include all technical information on the Schedule C. Petitioners request that the Schedule C be modified accordingly.

b. Developmental Authorizations

The proposed FCC Form 600 classifies all requests for developmental authorizations as "major" applications.[27] It appears that this blanket classification was unintended.

New rule Section 22.401 specifies that developmental authorizations may be issued in three situations.[28] Section 22.401(a) applies to "[f]ield strength surveys to evaluate the technical suitability of antenna locations for stations in the Public Mobile Services." Section 22.401(b) involves cases of "[e]xperimentation leading to the development of a new Public Mobile Service or technology." The two provisions essentially subsume current rule Section 22.401, which specifies the types of activities for which developmental authorizations may be issued.

The Commission has now codified a third category of activities which may be undertaken pursuant to a developmental authorization. The Commission acknowledged in the

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[27] FCC Form 600, Schedule A, Item A1.F. Requests for regular authorization for facilities operating under developmental authority are also considered major. Id. at A1.G.

[28] The Commission leaves open the possibility that developmental authorizations could be obtained in other contexts.

Report and Order that "[t]he vast majority of developmental authorizations now issued under Part 22 are for trial period operation of individual transmitters within a system . . . ."[29] These developmental authorizations were typically issued to allow the use of non-type accepted equipment. The widespread use of developmental authorizations in this context prompted the Commission to adopt new rule Section 22.401(c), pursuant to which the Commission may grant developmental authorizations for "[s]tations transmitting on channels in certain frequency ranges, to provide a trial period during which it can be individually determined whether such stations can operate without causing excessive interference to existing services." It does not appear that applications filed under Section 22.401(c) were intended to be major.

New rule Section 22.123 specifies the types of applications that will be considered major. Section 22.123(b) provides that "[a]pplications are major if they request developmental authorization pursuant to § 22.409 of this part, or a regular authorization for facilities operating under a developmental authorization." Section 22.409, in turn, addresses "[d]evelopmental authorization[s] for a new Public Mobile Service or technology"; that is, services specified under Section 22.401(b) noted above, not Section 22.401(c) (or Section 22.401(a)).[30] Applications for developmental authorization filed pursuant to Section 22.401(c) should therefore not be considered major.[31] Petitioners accordingly request clarification that

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29 Report and Order at A-27.

30 In fact, developmental authorization requests filed under Section 22.409 are subject to far more stringent requirements than other such applications.

31 This interpretation is further buttressed by language in the text of the Report and Order which reiterates that "[u]nder proposed and new § 22.123(b), applications for regular authorization of facilities operating under a developmental authorization are classified as major," as are requests filed "pursuant to new § 22.409 (experimentation toward the establishment of a new public mobile service)." Report and Order at A-12-A-13.

developmental applications not filed pursuant to new rule Section 22.409 will be deemed minor. FCC Form 600 would be the appropriate application form,[32] and FCC approval would be required prior to implementation consistent with current policies applicable to developmental authorizations.

If the Commission proposes to treat all developmental authorization requests as major, notwithstanding new rule Section 22.123(b) which classifies as major only one category of such applications, then Petitioners request that the Commission reconsider this decision. Under the current rules, developmental authorizations are obtained through the filing of FCC Form 489s, a relatively simple process which requires prior Commission approval but which also allows implementation usually within a two-week period. These procedures proved workable and did not, to Petitioners' knowledge, cause problems within the industry. The imposition of a more burdensome processing requirement would not make sense, particularly in cases involving non-type accepted equipment, since the underlying service is provided entirely within the applicant's CGSA on the applicant's authorized frequencies. The potential for interference to other carriers, in most cases, is thus nonexistent and the classification of these requests as major is unnecessary. As an additional safeguard, Section 22.404(c), which prohibits developmental authorization holders from causing interference to properly licensed services, would still be enforceable.

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[32] FCC Form 600, Schedule A, Item A1 S-W lists five types of authorization requests that will be treated as minor.

Petitioners also request that the Commission reconsider its decision to classify as major all requests for regular authorization for facilities operating under a developmental authorization. Developmental authorization applications that are minor in the first instance should be treated no differently when regular authority is requested.

Respectfully submitted,

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Dated: December 19, 1994